

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS

Elias Moises Lopez Diaz v. Grant Dickey, et al.

Lopez Diaz v. Dickey · No. 4:26-CV-00723 · Decided February 26, 2026

SUMMARY

The United States District Court for the Southern District of Texas dismissed without prejudice a detainee's 28 U.S.C. § 2241 habeas petition challenging his continued immigration detention. The court held that the petitioner's arguments concerning detention under 8 U.S.C. §§ 1225 and 1226, as well as related Fourth and Fifth Amendment claims, were foreclosed by Buenrostro-Mendez v. Bondi and Demore v. Kim. The court denied the petition and other pending motions as moot, while granting leave to seek reconsideration or file a separate petition if controlling precedent changes.

CASE DETAILS

COURT	United States District Court for the Southern District of Texas
WRITING FOR THE COURT	Andrew S. Hanen
JURISDICTION	United States District Court for the Southern District of Texas
DECIDED	February 26, 2026
DOCKET	4:26-CV-00723
DISPOSITION	dismissed
PROCEDURAL POSTURE	Petitioner sought habeas relief under 28 U.S.C. § 2241 challenging his continued immigration detention. The district court dismissed the petition without prejudice on preliminary review of the pleadings.
STANDARD OF REVIEW	Preliminary review under Rule 4 of the Rules Governing § 2254 Cases, applied to the § 2241 petition through Rule 1(b); dismissal is proper if it plainly appears from the petition and attached exhibits that the petitioner is not entitled to relief.
PRECEDENTIAL VALUE	unpublished district court order; precedential status unknown
PARTIES	Elias Moises Lopez Diaz v. Grant Dickey, et al.

TOPICS

- immigration detention
- removal proceedings
- federal habeas corpus
- due process
- pleadings

PRACTICE AREAS

immigration

federal habeas corpus

constitutional law

civil procedure

QUESTIONS PRESENTED

1. Whether the petitioner was entitled to discretionary bond consideration under 8 U.S.C. § 1226(a) rather than mandatory detention under 8 U.S.C. § 1225(b).
2. Whether the petitioner's statutory classification and detention claims were foreclosed by *Buenrostro-Mendez v. Bondi*.
3. Whether the petitioner's Fourth and Fifth Amendment claims regarding detention under the allegedly wrong statutory authority stated a basis for habeas relief.
4. Whether detention during removal proceedings violated the Fifth Amendment Due Process Clause at this stage.

HOLDINGS

1. The petitioner's arguments that he was not seeking admission and was entitled to discretionary bond under § 1226(a) were foreclosed by *Buenrostro-Mendez v. Bondi*; the petition did not establish entitlement to habeas relief.
2. The petitioner's Fourth and Fifth Amendment claims challenging detention under the allegedly wrong statutory authority were foreclosed by *Buenrostro-Mendez* and did not warrant habeas relief.
3. The petitioner's due-process challenge to detention during removal proceedings was precluded at this juncture because detention during removal proceedings is constitutionally permissible.

KEY QUOTATIONS

“[d]etention during removal proceedings is a constitutionally permissible part of that process.” (2/3)

“§§1225(b)(1) and 1225(b)(2) thus mandate detention of applicants for admission until certain proceedings have concluded” (2/3)

FACTUAL BACKGROUND

Lopez Diaz is a noncitizen detained by ICE and involved in removal proceedings. He entered the United States in 2021, and the government characterized him as an applicant for admission. He alleged that he was not seeking admission and therefore should receive discretionary bond consideration under 8 U.S.C. § 1226(a), rather than mandatory detention under § 1225(b).

PROCEDURAL HISTORY

Lopez Diaz, an ICE detainee in removal proceedings, filed a § 2241 petition asserting that he was improperly classified as an applicant for admission and therefore was subject to mandatory detention under 8 U.S.C. § 1225(b) rather than discretionary bond procedures under § 1226(a). While the case was pending, the Fifth Circuit decided *Buenrostro-Mendez v. Bondi*. The district court concluded that the petition's statutory and constitutional arguments were foreclosed and dismissed the case without prejudice.

DISPOSITION

dismissed

CASES CITED

- Buenrostro-Mendez v. Bondi, 2026 WL 323330 (5th Cir. Feb. 6, 2026)
- Demore v. Kim, 538 U.S. 510, 531 (2003)
- Jennings v. Rodriguez, 583 U.S. 281, 297 (2018)

OPINION

Southern District of Texas ENTERED UNITED STATES DISTRICT COURT February 26, 2026 SOUTHERN DISTRICT OF TEXAS Nathan Ochsner, Clerk HOUSTON DIVISION ELIAS MOISES LOPEZ DIAZ, § § Petitioner, § § VS. § CIVIL ACTION NO. 4:26-CV-00723 § GRANT DICKEY, ef al., § § Respondents. § ORDER OF DISMISSAL The petitioner, Elias Moises Lopez Diaz, is a detainee in the custody of United States Department of Homeland Security, Immigration and Customs Enforcement (“ICE”) officials.

Through counsel, petitioner filed a petition for a writ of habeas corpus under 28 U.S.C. § 2241, challenging his continued detention. Doc. No. 1. While this case was pending, the Fifth Circuit decided Buenrostro-Mendez v. Bondi, --- F.4th ----, No. 25-20496, 2026 WL 323330 (Sth Cir. Feb. 6, 2026).

The Court may dismiss a habeas petition on the pleadings “[i]f it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief.” Rule 4 of the Rules Governing § 2254 Cases in the United States District Courts (authorizing preliminary review and summary dismissal of habeas petitions on the pleadings).¹ A district court may apply any of the rules governing habeas petitions filed under 28 U.S.C. § 2254 to those filed under 28 U.S.C. § 2241.

See Rule 1(b), Rules Governing § 2254 Cases in the United States District Courts. 1/3 The petition and attached exhibits reflect that Petitioner is a noncitizen who entered the United States in 2021 and is in removal proceedings, where ICE alleges that he is an “applicant for admission.” Doc. No. | at 2. Petitioner pleads no facts to show that he has been admitted lawfully into the United States.

However, Petitioner contends that he was not “seeking admission” and therefore is entitled to a bond hearing under 8 U.S.C. § 1226(a), the statute permitting discretionary bond. He contends that Respondents have erroneously categorized him as an “applicant for admission” subject to mandatory detention under 8 U.S.C. § 1225(b). Petitioner’s arguments regarding sections 1225 and 1226 and their implementing regulations are foreclosed by Buenrostro-Mendez, *supra*.

Likewise, his Fourth and Fifth Amendment claims that he is being held under the wrong statutory authority are also foreclosed by *Buenrostro-Mendez*. Additionally, Petitioner's Fifth Amendment Due Process Clause claims are precluded, at this juncture, by *Demore v. Kim*, 538 U.S. 510, 531 (2003), because "[d]etention during removal proceedings is a constitutionally permissible part of that process." /d. (citations omitted); see also *Jennings v. Rodriguez*, 583 U.S. 281, 297 (2018) (explaining that "§§1225(b)(1) and 1225(b)(2) thus mandate detention of applicants for admission until certain proceedings have concluded").

Accordingly, the Court ORDERS as follows: 1. The petition (Doc. No. 1) is DENTED. 2. This case is DISMISSED without prejudice. 3. All other pending motions, if any, are DENIED as MOOT. 2/3 4. If the Fifth Circuit, en banc, or the United States Supreme Court enters a decision that is contrary to the decision in *Buenrostro-Mendez v. Bondi*, supra, Petitioner is granted leave to file a motion for reconsideration or initiate a separate petition.

SO ORDERED. SIGNED this (2G _ day of February 2026. ANDREW S. HANEN UNITED STATES DISTRICT JUDGE 3/3